Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies	)	IB Docket No. 05-220

REPLY COMMENTS OF ICO SATELLITE SERVICES G.P.

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Date: July 25, 2005

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REPLY COMMENTS

I. INTRODUCTION AND SUMMARY

ICO Satellite Services G.P. ("ICO") submits these reply comments in response to the Public Notice released on June 29, 2005, announcing the intent of the Federal Communications Commission ("FCC" or "Commission") to modify the spectrum reservations of ICO and TMI Communications and Company Limited Partnership ("TMI") pursuant to Section 316 of the Communications Act of 1934, as amended ("Communications Act"), to allow each license[1] access to at least 13.33 MHz of spectrum, or a third of the spectrum allocated to 2 GHz mobile satellite service ("MSS").[2]

[1] For ease of reference, the terms "licenses" and "licensees," with respect to 2 GHz MSS, will refer to FCC authorizations to provide 2 GHz MSS and the parties that hold those authorizations, regardless of whether the authorization is a U.S. satellite license or a letter of intent authorization granting a reservation of spectrum to a foreign-licensed satellite system.

[2] *See* FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-133 (June 29, 2005) ("*First Public Notice*"). Pursuant to a separate public notice, the Commission also is seeking comment on certain options for redistributing or reallocating the remaining one-third of the 2 GHz MSS spectrum allocation. *See* FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-134 (June 29, 2005) ("*Second Public Notice*").

The record demonstrates that the Commission's proposed modification will offer substantial public interest benefits and will not harm any other licensees. The proposed modification will enable ICO to serve homeland security and public safety needs, and to provide broadband service to rural and underserved areas by 2007, thus advancing the Administration's goal of ensuring universal broadband access by 2007.

The Commission correctly determined that an adjudicative proceeding under Section 316 is the proper forum for considering its proposed modification of the ICO and TMI 2 GHz MSS licenses. Because Section 316 limits participation in the proceeding to those licensees whose licenses would be modified or substantially affected by the proposed FCC action, proposals by unaffected parties seeking alternative use of the returned 2 GHz MSS spectrum are irrelevant to this proceeding and should be raised more appropriately in response to the *Second Public Notice*, which specifically invited comments on alternative uses of the spectrum.

Commenters opposing the proposed modification (collectively, the "Opponents")[3] do not hold any license rights that would be affected by the proposed modification, and therefore lack standing to protest the proposed action. Moreover, they fail to explain how the Commission can devote scarce MSS spectrum to alternative uses without depriving 2 GHz MSS of sufficient spectrum to develop robust, competitive broadband MSS services. 2 GHz MSS licensees are currently assigned less spectrum than any other licensee providing both voice and data MSS. The Commission should reject the Opponents' attempt to raise arguments that are not properly

[3] The Opponents include Inmarsat Ventures Limited ("Inmarsat"), CTIA – The Wireless Association ("CTIA"), T-Mobile USA, Inc. ("T-Mobile"), Globalstar LLC ("Globalstar"), and Sirius Satellite Radio, Inc. ("Sirius").

within the scope of this Section 316 proceeding, and should proceed with its proposed 2 GHz MSS spectrum redistribution pursuant to Section 316.

II. OPPONENTS OF THE PROPOSED MODIFICATION OF THE 2 GHz MSS SPECTRUM RESERVATIONS LACK STANDING

None of the Opponents demonstrated the requisite standing. In issuing the *First Public Notice,* the Commission announced its intent to modify ICO's and TMI's 2 GHz MSS spectrum reservations pursuant to Section 316 of the Communications Act. Section 316 on its face permits only the holder of the license that is subject to a proposed modification and "[a]ny other licensee or permittee who believes its license or permit would be *modified* by the proposed action" to protest the proposed modification.[4] Consistent with that requirement, the *First Public Notice* invited comments only from ICO, TMI, and "[a]ny licensee or permittee who believes its license will be modified by the proposed action."[5]

Despite the express language of Section 316 and the *First Public Notice,* the Opponents neglect to demonstrate or even allege that their licenses would be "modified" by the Commission's proposed action. The courts have held that "a license is modified for purposes of section 316 when an unconditional right conferred by the license is substantially affected."[6] For example, a license is "modified" if the Commission "grants a license to another [party] on that [same] frequency."[7] A license also is "modified" if a license grant "create[s] objectionable electrical interference to an existing licensee and the existing licensee is protected by

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[4] *See* 47 U.S.C. § 316(a)(1), (2).

[5] *First Public Notice* at 1-2.

[6] *See P&R Temmer v. FCC,* 743 F.2d 918, 927-28 (D.C. Cir. 1984).

[7] *Id.* at 927 (citing *FCC v. Nat'l Broadcasting Co.,* 319 U.S. 239 (1943); *Western Broadcasting Co. v. FCC,* 674 F.2d 44 (D.C. Cir. 1982)).

Commission policy or regulation from such interference."[8] A party that cannot demonstrate that its license would be "modified" by a proposed Section 316 modification effectively lacks standing to protest the proposed action.[9]

The proposed modification of ICO's and TMI's 2 GHz MSS spectrum would not confer rights to any spectrum already assigned to another licensee. None of the Opponents suggests that the proposed FCC action would cause any harmful interference to its licensed services. Thus, the proposed FCC action would not "substantially affect," or "modify," any right of license held by the Opponents. The Opponents therefore lack standing to protest the proposed modification, and their proposals seeking alternative use of the returned 2 GHz MSS spectrum are not within the scope of this Section 316 proceeding. Accordingly, their oppositions should be rejected.

III. THE PROPOSED MODIFICATION OF THE 2 GHz MSS SPECTRUM RESERVATIONS WILL SERVE THE PUBLIC INTEREST

Even assuming that the Opponents have standing, their oppositions to the Commission's proposed modification lack merit. Section 316 authorizes the Commission to modify a license if the modification "will promote the public interest, convenience, and necessity."[10] The Opponents fail to refute the substantial public interest benefits that would result from the Commission's proposed modification reserving at least 13.33 MHz of 2 GHz spectrum for ICO.

A. Additional Spectrum Will Allow 2 GHz MSS Licensees To Achieve The Administration's Goal Of Ensuring Universal Broadband Access By 2007

As ICO and others repeatedly have noted, additional spectrum will allow 2 GHz MSS licensees to offer broadband and basic telephone services to all areas of the country, particularly

[8] *See Western Broadcasting Co.*, 674 F.2d at 49.

[9] *See National Broadcasting Co. v. FCC*, 362 F.2d 946, 954 (D.C. Cir. 1966) ("an indirect modification finding" … "under Section 316" is "tantamount to a standing finding").

[10] 47 U.S.C. § 316(a)(1).

rural and remote areas that are not served adequately or at all by terrestrial systems, wireline or wireless.[11] Millions of Americans today still do not receive basic telephone service, and the vast majority of Americans, or approximately 80 percent of U.S. households, do not receive broadband service.[12] Moreover, FCC data shows that rural areas are significantly less likely to receive broadband service than urban areas.[13] In view of the lack of broadband access, the President of the United States has committed to making broadband service available in "every corner of our country *by the year 2007*."[14] Additionally, the Chairman of the Commission recently stated that "the most important policy priority for the commission is setting a regulatory framework that encourages the deployment of broadband. Both on the wireline side *and wireless*."[15]

The inherent capability to provide coverage to the entire United States at all times make MSS systems uniquely suited to extend affordable broadband services to areas of the country that are not readily or economically served by terrestrial wireline or wireless systems.[16] In fact, the Commission has found that satellite systems offer distinct economic and technical advantages over terrestrial wireless and wireline systems. Specifically, the Commission noted that "satellites

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[11] *See, e.g.*, Letter from Suzanne Hutchings Malloy, ICO, to Marlene H. Dortch, Secretary, FCC, Dkt. Nos. 02-34 & 02-248, at 2 (May 3, 2005); ICO Comments, ET Docket Nos. 00-258 & 95-18 & IB Docket No. 99-81, at 7-14 (Oct. 22, 2001).

[12] *See* FCC Industry Analysis Division, Wireline Competition Bureau, *Trends in Telephone Service*, Tables 2.7 & 16.3 (Apr. 2005).

[13] *Id.*, Table 2.7.

[14] *See* Patrick Ross, *Bush Touts Efforts to Promote Broadband*, Communications Daily, Apr. 27, 2004, at 1 (emphasis added).

[15] *Questions for Kevin J. Martin*, Wall St. J., July 18, 2005 (emphasis added).

[16] *See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services*, 9 FCC Rcd 4957, ¶ 94 (1994).

may offer cost advantages over wireline access in rural and remote areas, where sparsely populated areas cannot provide the economies of scale to justify the deployment costs of wireline networks."[17] Satellites also can provide service to "geographically isolated areas, such as mountainous regions and deep valleys, where rugged and impassable terrain may make service via terrestrial wireless or wireline telephony economically impractical."[18] Consequently, the Commission has found satellites to be "an excellent technology for delivering basic and advanced telecommunication services to unserved, rural, insular or economically isolated areas, including Native American communities, Alaska, Hawaii, and Puerto Rico, and U.S. territories and possessions such as communities within the U.S. Virgin Islands, Guam and American Samoa."[19] Next-generation 2 GHz MSS systems, in particular, are even better suited to extend affordable broadband services to all areas of the country because they are designed to incorporate the latest satellite technology.

By providing for an immediate redistribution of a substantial portion of the returned 2 GHz MSS spectrum to ICO, the Commission will ensure that the federal goal of universal broadband access can be achieved by 2007. ICO fully expects, and in fact is required by the Commission's milestone requirements, to launch its 2 GHz MSS system by July 17, 2007.

A spectrum reservation of at least 13.33 MHz would provide ICO with the bandwidth needed to offer broadband service following the launch of its system in July 2007. Reallocation of the spectrum for other services or redistribution of the spectrum to new 2 GHz MSS licensees

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[17] *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11794, ¶ 13 (2000).

[18] *Id.*

[19] *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, ¶ 32 (2000) ("*2 GHz MSS Rules Order*").

would require additional, lengthy rulemaking and licensing proceedings that easily would extend well beyond 2007.

Contrary to some Opponents' erroneous contentions,[20] ICO diligently and promptly has pursued implementation of its system, and has not required any milestone extension or waiver.[21] The primary hurdles that ICO faces do not result from a lack of willingness or commitment to the timely deployment of its 2 GHz MSS system, but rather from the persistent regulatory uncertainty regarding the proper amount of spectrum that would support the commercial viability of the system over the long term.

B. Additional Spectrum Will Allow 2 GHz MSS Licensees To Serve Homeland Security And Public Safety Needs

None of the Opponents disputes the importance of 2 GHz MSS to homeland security and public safety. As Inmarsat acknowledges, MSS "remains essential to support the needs of public safety and homeland security."[22] The Commission specifically cited satellites' unique role in the provision of these services in its proceedings allocating spectrum and establishing service rules for 2 GHz MSS.[23] Terrestrial wireline and wireless systems are susceptible to numerous forces,

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[20] *See* Inmarsat Comments at 16-17; T-Mobile Comments at 2-3.

[21] ICO met the first four milestones for its 2 GHz MSS license for a nongeostationary system. *See ICO Satellite Services, G.P.*, D.A. 05-1504, ¶¶ 4, 8 and 10 (May 24, 2005). Additionally, ICO filed certifications of completion of the first two milestones required under its modified 2 GHz MSS license for a geostationary system. *See* Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Marlene H. Dortch, Secretary, FCC (July 19, 2005); *see also* Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Marlene H. Dortch, Secretary, FCC (July 25, 2005).

[22] Inmarsat Comments at 8.

[23] *Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-Band*, Notice of Proposed Rulemaking, 11 FCC Rcd 11675, ¶12 (1996)(noting that satellites "provide emergency communications to any areas in time of emergencies and natural disasters."); *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, 10 FCC Rcd 3230, ¶ 7

Footnote continues…

such as loss of power and physical damage resulting from environmental or man-made cataclysms, that do not endanger MSS systems. Time and again, MSS has proven to be the only effective means of communications at times and in locations where terrestrial wireline and wireless systems have failed. For example, MSS telephones were deployed by rescue workers at the sites of both the World Trade Center and Pentagon attacks when transmission towers that powered cellular phones were destroyed or remaining capacity was overburdened.[24] More recently, MSS systems were relied upon during the Asian tsunami relief efforts, particularly when the wireless networks were unavailable.[25]

(1995)(noting that satellites "provide nationwide public safety coverage….[and] could satisfy important requirements that cannot be economically satisfied by other means").

[24] *See, e.g., Rescue Workers Get New Phones*, St. Petersburg Times, Sept. 18, 2001, at 9A (reporting that rescuers and city crews were having difficulty with the recovery effort because cell phones often did not work in lower Manhattan, prompting President Bush to provide 200 special satellite phones for rescue workers at the World Trade Center); Sarah Bisker, *Ohio University Satellite Relieves Telephone Line Congestion*, University Wire, Sept. 12, 2001 (reporting that the New York State Emergency Management Agency requested use of a NASA satellite to provide alternative communications routes); Dick Kelsey, *Satellite Phone Interest Renewed After Attack Rescue Use*, Newsbytes, Sept. 25, 2001; *Satellite Phones Show Value As Supplemental Service*, Satellite Today, Sept. 14, 2001.

[25] *See, e.g.*, Northern Sky Research, *Mobile Services Being Deployed Quickly to Aid Victims of Tsunami* (Jan. 2005) ("As efforts towards alleviating the plight of the Asian Tsunami victims continue, the importance of robust and reliable broadband communication links via satellite remains vital. Next-generation mobile satellite services are proving to be an integral component of relief efforts, which provides a crucial link between victims, their families and those who are tasked to rescue and rebuild what has been damaged or destroyed."); International Committee of the Red Cross, *Indonesia: The Humanitarian Response Since the Tsunami* (Apr. 13, 2005) ("Since early January, family links have been restored in nearly 2,500 cases, the majority of which took place using satellite phones made available to survivors particularly on the west coast."), *available at* http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/indonesia-update-130405; Edward Harris, *Cutting-Edge Telecom to Help Post-Tsunami* (Jan. 13, 2005) *available at* http://wtopnews.com/index.php?nid=108&sid=388800 ("In northern Sumatra's Aceh Province, closest to the epicenter of the earthquake and hardest hit by the tsunami, the disaster ruined many mobile-phone signal-repeater posts, leaving residents and aid workers alike cursing poor coverage and dropped signals. Many foreign aid workers leapfrog the shaky mobile system via satellites.").

In view of the unique capabilities offered by MSS, it is crucial that the Commission provide sufficient spectrum to allow 2 GHz MSS licensees to serve homeland security and public safety needs. Granting additional spectrum to 2 GHz MSS licensees will foster robust MSS competition, thus resulting in a broader array of services and rates to satisfy homeland security and public safety need.

C. Additional Spectrum Will Support The Long-Term Operations Of 2 GHz MSS Systems

As ICO repeatedly has noted, access to sufficient spectrum is critical to the long-term commercial viability of 2 GHz MSS systems.[26] Accordingly, ICO has long sought access to a minimum of 15 x 2 MHz of spectrum for its system, well before the Commission adopted rules for ancillary terrestrial component ("ATC") service.[27] Other 2 GHz MSS licensees also requested access to comparable amounts of spectrum,[28] and warned that assigning a lesser amount would be "too small to permit economically viable MSS operations."[29]

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[26] *See* Letter from Suzanne Hutchings Malloy, ICO, to Marlene H. Dortch, Secretary, FCC, Dkt. Nos. 02-34 & 02-248, at 2 (May 3, 2005); Letter from ICO to Marlene Dortch, Secretary, FCC (Dec. 20, 2002); *see* Letter from ICO to Marlene Dortch, Secretary, FCC (May 6, 2003); Letter from Mobile Communications Holdings, Inc., Constellation Communications Holdings, Inc., ICO to Marlene Dortch, Secretary, FCC (Dec. 12, 2002); ICO Comments, ET Docket Nos. 00-258 & 95-18 & IB Docket No. 99-81, at 15 (Oct. 22, 2001).

[27] *See, e.g.*, ICO Comments, ET Docket Nos. 00-258 & 95-18 & IB Docket No. 99-81, at 15 (Oct. 22, 2001); SEC Form F-1 Registration of ICO Global Communications (Holdings) Limited, at 24 (June 12, 1998).

[28] For example, Boeing previously requested use of a total of 17.1 MHz of 2 GHz MSS spectrum (consisting of 8.25 MHz for uplink and 8.85 MHz for downlink). Additionally, Celsat sought a total of 25 x 2 MHz of spectrum for its system. *See* Application of The Boeing Company, File No. STAT-LOA-19970926-00149, at 4, Attachment One at 5 (Sept. 26, 1997); Amendment to Application of Celsat America, Inc., File No. SAT-AMD-19970925-00124, at 3 (Sept. 3, 1997).

[29] Supplemental Comments of the ICO USA Service Group, IB Docket No. 99-81, at 4 n.7 (Feb. 17, 2000).

The amount of MSS spectrum reserved for ICO and other 2 GHz MSS licensees is considerably less than that assigned to other MSS licensees. For example, Globalstar has access to 27.85 MHz of L-band and S-band spectrum. Additionally, MSV is assigned up to 20 MHz of internationally coordinated L-band spectrum.[30] Based on publicly available information, it is reasonable to infer that Inmarsat has access to at least as much internationally coordinated L-band spectrum as MSV.

Inmarsat's and Globalstar's own efforts to acquire additional 2 GHz spectrum, even though they already have access to significantly more spectrum than ICO and TMI, confirm that a substantial amount of spectrum is required to support the long-term operations of 2 GHz MSS systems. As even Inmarsat acknowledges, "[i]t is a truism that more spectrum is better, because more spectrum supports greater overall system capacity and throughput, and a greater number of subscribers."[31]

Contrary to the Opponents' contentions,[32] ICO is not required to provide a technical or otherwise compelling showing of need for additional spectrum. Inmarsat erroneously claims that ICO is required to submit "convincing evidence" of "extraordinarily large, cognizable, and non-speculative efficiencies,"[33] but that requirement applies only if ICO were seeking to rebut the

[30] *See Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band*, Report and Order, 17 FCC Rcd 2704, ¶ 45 (2002).

[31] Inmarsat Comments at 21.

[32] *See* Inmarsat Comments at 20-21; CTIA Comments at 14-16; T-Mobile Comments at 3-4.

[33] *Id.* at 20.

Commission's presumption that three satellite licensees in a frequency band are sufficient.[34] ICO is not seeking to rebut that presumption in this proceeding.

CTIA and T-Mobile argue that ICO and TMI failed to demonstrate their need for additional spectrum, but then suggest that ICO and TMI could not possibly provide this showing because they are not operational and cannot provide the necessary data.[35] This rationale confirms the futility in insisting that licensees must provide a detailed showing of spectrum need in order to obtain additional, available spectrum before they have launched their systems. Imposing this requirement would be inconsistent with the Commission's rules and policies generally requiring automatic redistribution of returned satellite spectrum to the remaining licensees in the frequency band.[36]

IV. PROPOSALS SEEKING ALTERNATIVE USE OF THE RETURNED 2 GHz MSS SPECTRUM WILL NOT SERVE THE PUBLIC INTEREST

As discussed in Section II above, Section 316 limits participation in this proceeding to those licensees whose licenses would be modified or substantially affected by the proposed FCC action. Accordingly, proposals by unaffected parties seeking alternative use of the returned 2 GHz MSS spectrum are irrelevant to this Section 316 proceeding. Even assuming, however, that the Commission should consider these proposals in this proceeding, none of the alternative proposals would ensure prompt deployment of service or would better serve the public interest

[34] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶ 64 (2003) ("*Satellite Licensing Reform Order*").

[35] *See* CTIA Comments at 10 ("The fact that TMI is not operational, and thus cannot submit any data about current spectrum usage and customers demands, does not relieve it of the burden to make a compelling showing, through substantiated economic and technical projections, of its system needs for additional spectrum."); T-Mobile Comments at 4 ("neither system is even operational yet so it is unclear what capacity these entities will eventually need if they are ever fully deployed").

[36] *See Satellite Licensing Reform Order*, ¶¶ 61-63.

than the Commission's proposal to allow ICO and TMI each to access at least 13.33 MHz of spectrum.

Specifically, CTIA and T-Mobile offer no basis for further reallocating 2 GHz MSS spectrum merely two years after the Commission reallocated 30 MHz of 2 GHz MSS spectrum for other services.[37] Moreover, less than a year ago, the Commission rejected CTIA's request to reallocate additional 2 GHz MSS spectrum and declared that MSS licensees "should be given an opportunity to begin operations with the forty megahertz that remained after the 2 GHz MSS reallocation."[38]

Additionally, Inmarsat fails to substantiate its alleged need for additional spectrum. Inmarsat is authorized by the U.K. to use up to 66 MHz of L-band spectrum, subject to coordination with other L-band MSS operators pursuant to the Mexico City Agreement.[39] Based on publicly available information, it appears that Inmarsat has coordinated for its own use an amount of spectrum comparable to the 20 MHz of L-band spectrum assigned to MSV. This amount is substantially more than the 8 MHz of spectrum currently reserved for ICO and TMI individually or the 13.33 MHz of spectrum that the Commission proposes to make available to each of those companies. Moreover, because the amount of spectrum assigned to Inmarsat under the Mexico City Agreement is based upon actual usage and projections of future need, it is possible that Inmarsat could obtain access to even more spectrum in the near future. In any event, Inmarsat had full opportunity to acquire 2 GHz MSS spectrum and in fact submitted an

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[37] *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz*, Third Report and Order, 18 FCC Rcd 2223, ¶ 28 (2003).

[38] *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz*, Sixth Report and Order, 19 FCC Rcd 20720, ¶ 96 (2004).

[39] *See Comsat Corp.*, 16 FCC Rcd 21661, ¶¶ 5-7 (2001).

application for a 2 GHz MSS license, but subsequently withdrew its application.[40] Inmarsat fails to demonstrate that its need for additional spectrum is more compelling now than it was four years ago, when it could have pursued its application and obtained a 2 GHz MSS license.

Furthermore, contrary to Globalstar's contention, the proposed redistribution of 2 GHz MSS spectrum to ICO and TMI would not prejudice, but rather would be subject to the outcome of Globalstar's pending petition for reconsideration of its 2 GHz MSS license cancellation. After the Commission initially canceled TMI's 2 GHz MSS authorization, it redistributed the abandoned spectrum among the remaining 2 GHz MSS licensees.[41] This spectrum redistribution did not prevent the Commission from later reinstating the TMI license and returning 2 GHz MSS spectrum to TMI, thus effectively modifying the licenses of other 2 GHz MSS licensees to reduce the amount of their assigned spectrum.[42] Similarly, the spectrum redistribution proposed in this proceeding should not preclude the Commission from returning 2 GHz MSS spectrum to Globalstar if Globalstar's license is reinstated on appeal.

Finally, Sirius requests that the Commission "obtain and review the public interest benefits of the proposals it requested" before modifying ICO's and TMI's spectrum reservations, but offers no specific proposal for use of the spectrum at issue in this proceeding.[43] Consistent with the requirements of Section 316, ICO has demonstrated that the Commission's proposed spectrum redistribution will serve the public interest. The Commission did not solicit comment on any alternative proposals in this proceeding. Rather, the Commission sought comment on

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[40] *See 2 GHz MSS Rules Order*, ¶ 17 n.80.

[41] *See, e.g., ICO Satellite Services G.P.*, 18 FCC Rcd 12339, ¶ 3 (Int'l Bur. 2003).

[42] *See TMI Communications and Co., Ltd. P'ship*, 19 FCC Rcd 12603, ¶ 1 (2004).

[43] *See* Sirius Comments at 4.

alternative proposals in a separate proceeding addressing the disposition of the remaining one-third of the 2 GHz MSS spectrum allocation. Accordingly, its opposition does not warrant further consideration on the merits.

V. CONCLUSION

Based upon the foregoing, ICO urges the Commission immediately to modify ICO's and TMI's 2 GHz MSS spectrum reservations to allow each party to access at least 13.33 MHz of spectrum, subject to the outcome of the pending appeals of the 2 GHz MSS license cancellations. The redistribution of 13.3 MHz of spectrum will help ensure that the Administration meets its goal to have broadband services available to all Americans by 2007 and that homeland security and pubic safety services also will be available nationwide.

Respectfully submitted,

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July 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2005, a copy of the foregoing **REPLY COMMENTS** was served by electronic mail upon the following:

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